MEMORANDUM FOR
THE AD HOC COMMITTEE ON THE ARIZONA RULES OF EVIDENCE

Paul Ahler
Timothy Eckstein
Michael Miller

Rule 410 Subgroup Report

Executive Summary

ARE 410 generally provides that pleas and a defendant's plea-related statements are not admissible in any civil, criminal or administrative proceeding. It codifies long-standing common law.

The originally-proposed FRE 410 was mired in controversy regarding the nature and intended recipients of inadmissible statements. The Congressional compromise was a complex proposal involving a link to the also-pending Fed.R.Crim.P., Rule 11(e)(6) that covered the same ground in a slightly different manner, but which had the effect of altering the original FRE 410. Within several years federal case law mirrored the controversy, further complicated by disparate interpretations based on FRE 410 versus Rule 11(e)(6). In 1979, FRE 410 was amended to conform to Rule 11(e)(6), (which was also under revision to limit holdings in several circuits). By 2002, it was recognized that FRE 410 should govern admissibility rather than a rule of criminal procedure, and Rule 11(f) was enacted to cross-reference the evidence rule without any elaborations. Although some debate continues regarding the precedential value of 1970's case law, the placement and basic structure of the rule limiting admissibility of plea negotiations, agreements, and related statements is now solidified in federal jurisprudence.

ARE 410 and Ariz.R.Crim.P. 17.4(f) replicate the 1975 federal approach using cross-linked rules. Unfortunately, although the notes to both rules reference their federal counter-parts,

neither Arizona rule reflects the current federal rule. Further, there is some suggestion that recent Arizona courts attempt to follow the original FRE 410 without an appreciation for the circuitous evolution of the rule and its relationship to the linked rule of criminal procedure.

The current FRE 410 has largely been adopted in Arizona case law. The only significant departure is an explicit reference in ARE 410 to exceptions contained in Arizona statutes or the Rules of Criminal Procedure. Adoption of FRE 410 with the Arizona-specific modifications will provide accessibility to federal case law and reinforce dicta in Arizona cases that largely adopted the extant FRE 410. The change will not alter Arizona law or practice.

The Subgroup recommends:

1. Adoption of FRE 410 with modifications that:
    a. Add Arizona statutory and procedural rule exceptions to keep it consistent with existing law;
    b. Add application to administrative proceedings to keep it consistent with existing law; and,
    c. Remove the exception at ¶ (ii) to avoid creating law in an area that is currently unsettled.
2. The adoption memorandum includes a discussion of the difference between Ariz.R.Crim.P. 17.4(f) and Fed.R.Crim.P. 11(f). The discussion should include a recommendation to adopt Fed.R.Crim.P. 11(f) or, at a minimum, some indication that ARE 410 controls admissibility rather than Ariz.R.Crim.P. 17.4. Otherwise, it is possible that a trial court could reach opposite conclusions depending on whether it applies ARE 410 or Ariz.R.Crim.P. 17.4.

Recommended Rule 410	Current ARE 410
Except as otherwise provided in this rule, an applicable Arizona statute or the Arizona Rules of Criminal Procedure, evidence of the following is not, in any civil, criminal or administrative proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any proceedings under Rule 17.4 of the Arizona Rules of Criminal Procedure or comparable federal procedure regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.	Except as otherwise provided by applicable Act of Congress, Arizona statute, or the Arizona Rules of Criminal Procedure, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere or no contest, or an offer to plead guilty, nolo contendere or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers is not admissible against the person who made the plea or offer in any civil or criminal action or administrative proceeding.

Red-lined Comparison of Recommended ARE 410 with Extant ARE 410

Except as otherwise provided in this rule, an~~by~~ applicable ~~Act of Congress,~~ Arizona statute or the Arizona Rules of Criminal Procedure, evidence of ~~a plea of guilty, later withdrawn, or a plea of nolo contendere or no contest, or an offer to plead guilty, nolo contendere or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers~~the following is not ~~admissible against the person who made the plea or offer,~~ in any civil ~~or,~~ criminal ~~action,~~ or administrative proceeding~~.~~, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under Rule 17.4 of the Arizona Rules of Criminal Procedure or comparable federal procedure regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

Comparison of Arizona and Federal Rules

ARE 410	**FRE 410**
Except as otherwise provided by applicable Act of Congress, Arizona statute, or the Arizona Rules of Criminal Procedure, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere or no contest, or an offer to plead guilty, nolo contendere or no contest to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers is not admissible against the person who made the plea or offer in any civil or criminal action or administrative proceeding.	Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Ariz.R.Crim.Proc., Rule 17.4(f)	**Fed.R.Crim.Proc., Rule 11(f)**
When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible against the defendant in any criminal or civil action or administrative proceeding.	The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

Redlined version proposing Arizona adoption of Fed.R.Crim.Proc. 11(f)

~~When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible against the defendant in any criminal or civil action or administrative proceeding.~~The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Arizona Rule of Evidence 410.

Arizona Case law re: ARE 410

There are very few cases interpreting ARE 410. All but one state uncontroversial holdings that are consistent with the undisputed purpose of FRE 410. *See, e.g., State v. Fillmore,* 187 Ariz. 174, 178, 927 P.2d 1303 (App. 1996)(unsolicited offers to assist prosecution are not automatically protected) and *State v. Vargas*, 127 Ariz. 59, 61, 618 P.2d 229, 231 (1980)(trial court erred in permitting state to impeach defendant with document used in plea agreement).

In *State v. Campoy*, 220 Ariz. 539, 207 P.3d 792 (App. 2009), the court was required to address the differences between ARE 410 and Rule 17.4(f). The court traced the development[1] of FRE 410 and Rule 11(e)(6) in concluding that post-plea statements are not protected by ARE 410, especially if the defendant's later statements are untruthful. *Id.* at ¶ 24. The decision has been criticized for an alleged failure to understand the interactions among the 1975 and 1979 amendments to FRE 410 and Rule 11(e)(6). *See* Miller, Razing Arizona: Court Of Appeals Of Arizona Disastrously Mischaracterizes Amendment To Plea Bargaining Portion Of Rule 410, http://lawprofessors.typepad.com/evidenceprof/2009/05/az-410state-v-campoy----p3d------2009-wl-1124384arizapp-div-22009.html, (dated May 8, 2009).

Whether the *Campoy* court was guilty of 'disastrous mischaracterization' or the evidence professor failed to recognize the weight of prior Arizona authority is a debatable matter, but the decision illustrates the difficulty interpreting ARE 410 and Rule 17.4(f) due the differences with their federal counterparts. Further, it is fair to state that working judges and attorneys should not be expected to master the interactions among cases and two sets of federal rules amendments, especially if the issue arises in trial.

[1] The evolution of FRE 410 is included as an appendix to this memo.

Arizona Statutory and Administrative Law Exceptions

ARE 410 differs from FRE 410 in two significant respects, which have the effect of both limiting the potential reach of the rule and extending it beyond criminal or civil actions. First, the Arizona rule recognizes that the Legislature may create statutory exceptions to the rule of non-admissibility. Second, the Arizona rule also applies to "administrative proceedings."[2] Excluding either difference from a new rule could create a significant change in Arizona law.

Statutory Exceptions

The Legislature regularly classifies no contest pleas as being the functional equivalent of a guilty verdict. For instance, A.R.S. § 13-807 provides:

> A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this state against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas.

Additionally, Title 32 licensing laws for professions and occupations generally contain an "unprofessional conduct" prohibition for criminal conduct.[3] Evidence of such conduct can include a no contest plea. *See e.g.,* A.R.S. § 32-1601(18)(b)(nursing law recognizes that "a plea of no contest is conclusive evidence of the commission [of unprofessional conduct])." Of course, where the essential elements necessary for a criminal judgment do not match those for a related civil action, a plea of no contest may not obviate the need for a trial on the merits in the civil case. *See Republic Ins. Co. v. Feidler*, 178 Ariz. 528, 875 P.2d 187 (App. 1993).

---

[2] There is an arguable difference in the choice of terms to describe civil/criminal versus administrative matters. FRE 410 refers to "civil or criminal proceedings" whereas ARE 410 references "any civil or criminal action or administrative proceeding." We discern no difference between an action and a proceeding, although a hyper-technical argument might posit that a proceeding is a component part of an action. In any event, we suggest adopting the federal reference to "proceedings."

[3] *See e.g.*, A.R.S. § 32-572 (Cosmetology); A.R.S. §§ 32-1366, 32-1301 (Funeral Directors); A.R.S. §§ 32-1451, 32-1401 (Medicine and Surgery); A.R.S. §§ 32-1501, 32-1551 (Naturopathic Medicine); A.R.S. §§ 32-1663, 32-1601 (Nursing); A.R.S. §§ 32-1927, 32-1901.01 (Pharmacy); A.R.S. §§§ 32-2081, 32-2061, 32-2091 (Psychologists); A.R.S. §31-2153 (Real Estate); A.R.S. §§ 32-2401, 32-2457 (Private Investigators); A.R.S. §§ 32-2551, 32-2501

Application to Administrative Proceedings

The Arizona rule extends to administrative proceedings, although such a provision presumes that the rules of evidence apply in the proceeding. *See e.g.*, A.R.S. §§ 32-852.01 (board may waive rules of evidence) and 23-941(f) (administrative law judge not bound by statutory rules of evidence). Nonetheless, removing the application of ARE 410 has the potential of inadvertently changing Arizona law enacted within the past thirty-five years that has relied upon this clause in the rule.

Federal Admissibility Exception at ¶ (ii)

The federal rule provides an exception at ¶ (ii) that has not been addressed in Arizona case law.[4] It provides "A statement is admissible . . . (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel." The current ARE 410 arguably prohibits any use of statements in a perjury or false statement prosecution, but in the proper case a court might find the statement admissible to prevent fraud. *See Campoy, supra*, 220 Ariz. at 548, ¶ 24 (ARE 410 "not intended to provide defendants with a shield from the consequences of providing law enforcement officials with untruthful information . . . rather than promoting candor, it would reward deceitful conduct."). Adoption of the federal exception would resolve an unsettled point of Arizona law by permitting admission of such statement under the conditions noted. As such, it would go beyond the charge of the Committee.

(Physicians Assistants); A.R.S. §§ 32-2636, 32-2601 (Security Guards); A.R.S. §§ 32-2934, 32-2933 (Homeopathic Physicians); A.R.S. §§ 32-3281, 32-3251 (Behavioral Health Professionals); A.R.S. §§ 32-3442, 32-3401 (Occupational Therapy).

[4] The first exception has been essentially adopted by case law. *See State v. Linden*, 136 Ariz. 129, 138, 664 P.2d 673 (App. 1983).

Appendix I

History of FRE 410 and Fed.R.Crim.Proc. 11

In 1972 the United States Supreme Court transmitted to the Senate the following proposed FRE 410:

> Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

Miller, Caveat Prosecutor: Where Courts Went Wrong In Applying Robertson's Two-Tiered Analysis To Plea Bargaining, And How To Correct Their Mistakes, 32 New Eng. J. on Crim. & Civ. Confinement 209, 213 (2006). The Senate added an exception to the proposed rule to make inconsistent statements admissible for impeachment or perjury prosecution. *Id.*. The 1972 Advisory Note did not discuss the exception, but generally explained the sources of the rule, including federal case law, comparable state rules, and the 1968 ABA Standards Relating to Pleas of Guilty. The 1974 Advisory Note identifies a competing House proposal that would extend the rule to "statements made in connections with these pleas or offers." This was essentially a rejection of the Senate's proposed exception. The 1974 Note observed that the issues raised by the House were present in the pending modification to Rule 11(e)(6) of the Federal Rules of Civil Procedure. Rather than tackle the differences head-on in the context of FRE 410, Congress deferred decision until final passage of Rule 11(e)(6), which was permitted to supersede FRE 410 in the event of any differences:

> The Conferees further determined that the issues presented by the use of guilty and nolo contendere pleas, offers of such pleas, and statements made in connection with such pleas or offers, can be explored in greater detail during Congressional consideration of Rule 11(e)(6) of the Federal Rules of Criminal Procedure. The Conferees believe, therefore, that it is best to defer its effective

> date until August 1, 1975. The Conferees intend that Rule 410 would be superseded by any subsequent Federal Rule of Criminal Procedure or act of Congress with which it is inconsistent, if the Federal Rule of Criminal Procedure or Act of Congress takes effect or becomes law after the date of the enactment of the act establishing the rules of evidence.

The 1979 Advisory Note explained that there were changes to Rule 11(e)(6) that "would make comparable changes in rule 410." Those amendments are contained in the extant rule. The explanation for the changes, however, is contained in the 1979 Note to Rule 11(e)(6). Although lengthy, the following selection from the Note is worth repeating:

> **Note to Subdivision (e)(6).** The major objective of the amendment to rule 11(e)(6) is to describe more precisely, consistent with the original purpose of the provision, what evidence relating to pleas or plea discussions is inadmissible. The present language is susceptible to interpretation which would make it applicable to a wide variety of statements made under various circumstances other than within the context of those plea discussions authorized by rule 11(e) and intended to be protected by subdivision (e)(6) of the rule. See *United States v. Herman*, 544 F.2d 791 (5th Cir. 1977), discussed herein.
>
> Fed.R.Ev. 410, as originally adopted by Pub.L. 93-595, provided in part that "evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer." (This rule was adopted with the proviso that it "shall be superseded by any amendment to the Federal Rules of Criminal Procedure which is inconsistent with this rule.") As the Advisory Committee Note explained: "Exclusion of offers to plead guilty or nolo has as its purpose the promotion of disposition of criminal cases by compromise." The amendment of Fed.R.Crim.P. 11, transmitted to Congress by the Supreme Court in April 1974, contained a subdivision (e) (6) essentially identical to the rule 410 language quoted above, as a part of a substantial revision of rule 11. The most significant feature of this revision was the express recognition given to the fact that the "attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching" a plea agreement. Subdivision (e) (6) was intended to encourage such discussions. As noted in H.R.Rep. No. 94-247, 94th Cong., 1st Sess. 7 (1975), the purpose of subdivision (e) (6) is to not "discourage defendants from being completely candid and open during plea negotiations." Similarly, H.R.Rep. No. 94-414, 94th Cong., 1st Sess. 10 (1975), states that "Rule 11e(6) deals with the use of statements made in connection with plea agreements." (Rule 11(e) (6) was thereafter enacted, with the addition of the proviso allowing use of statements in a prosecution for perjury, and with the qualification that the inadmissible statements must also be "relevant to" the inadmissible pleas or offers. Pub.L. 94-64; Fed.R.Ev. 410 was then amended to conform. form. Pub.L. 94-149.)
>
> While this history shows that the purpose of Fed.R.Ev. 410 and Fed.R.Crim.P. 11(e) (6) is to permit the unrestrained candor which produces effective plea discussions between the "attorney for the government and the attorney for the defendant or the defendant when acting pro se," given visibility and sanction in rule 11(e), a literal reading of the language of these two rules could reasonably lead to the conclusion that a broader rule of inadmissibility obtains. That is, because "statements" are generally inadmissible if "made in connection with, and relevant to" an "offer to plead guilty," it might be thought that an otherwise voluntary admission to law enforcement officials is rendered inadmissible merely because it was made in the hope of obtaining leniency by

a plea. Some decisions interpreting rule 11(e)(6) point in this direction. See *United States v. Herman*, 544 F.2d 791 (5th Cir. 1977) (defendant in custody of two postal inspectors during continuance of removal hearing instigated conversation with them and at some point said he would plead guilty to armed robbery if the murder charge was dropped; one inspector stated they were not "in position" to make any deals in this regard; held, defendant's statement inadmissible under rule 11(e) (6) because the defendant "made the statements during the course of a conversation in which he sought concessions from the government in return for a guilty plea"); *United States v. Brooks*, 536 F.2d 1137 (6th Cir. 1976) (defendant telephoned postal inspector and offered to plead guilty if he got 2-year maximum; statement inadmissible).

The amendment makes inadmissible statements made "in the course of any proceedings under this rule regarding" either a plea of guilty later withdrawn or a plea of nolo contendere, and also statements "made in the course of plea discussions with an attorney for the government which do not result in a plea of guilty or which result in a plea of guilty later withdrawn." It is not limited to statements by the defendant himself, and thus would cover statements by defense counsel regarding defendant's incriminating admissions to him. It thus fully protects the plea discussion process authorized by rule 11 without attempting to deal with confrontations between suspects and law enforcement agents, which involve problems of quite different dimensions. See, e.g., ALI Model Code of Pre-Arraignment Procedure, art. 140 and § 150.2(8) (Proposed Official Draft, 1975) (latter section requires exclusion if "a law enforcement officer induces any person to make a statement by promising leniency"). This change, it must be emphasized, does not compel the conclusion that statements made to law enforcement agents, especially when the agents purport to have authority to bargain, are inevitably admissible. Rather, the point is that such cases are not covered by the per se rule of 11(e) (6) and thus must be resolved by that body of law dealing with police interrogations.

If there has been a plea of guilty later withdrawn or a plea of nolo contendere, subdivision (e) (6) (C) makes inadmissible statements made "in the course of any proceedings under this rule" regarding such pleas. This includes, for example, admissions by the defendant when he makes his plea in court pursuant to rule 11 and also admissions made to provide the factual basis pursuant to subdivision (f). However, subdivision (e) (6) (C) is not limited to statements made in court. If the court were to defer its decision on a plea agreement pending examination of the presentence report, as authorized by subdivision (e) (2), statements made to the probation officer in connection with the preparation of that report would come within this provision.

This amendment is fully consistent with all recent and major law reform efforts on this subject. ALI Model Code of Pre-Arraignment Procedure § 350.7 (Proposed Official Draft, 1975), and ABA Standards Relating to Pleas of Guilty § 3.4 (Approved Draft, 1968) both provide:
Unless the defendant subsequently enters a plea of guilty or nolo contendere which is not withdrawn, the fact that the defendant or his counsel and the prosecuting attorney engaged in plea discussions or made a plea agreement should not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceedings.

The Commentary to the latter states:
The above standard is limited to discussions and agreements with the prosecuting attorney. Sometimes defendants will indicate to the police their willingness to bargain, and in such instances these statements are sometimes admitted in court against the defendant. *State v. Christian*, 245 S.W.2d 895 (Mo.1952). If the police initiate this kind of discussion, this may have some bearing on the admissibility of the defendant's statement. However, the policy considerations relevant to this issue are better dealt with in the context of standards governing in-custody interrogation by the police.

Similarly, Unif.R.Crim.P. 441(d) (Approved Draft, 1974), provides that except under limited circumstances "no discussion between the parties or statement by the defendant or his lawyer under this Rule," i.e., the rule providing "the parties may meet to discuss the possibility of pretrial

> diversion * * * or of a plea agreement," are admissible. The amendment is likewise consistent with the typical state provision on this subject; see, e.g., Ill.S.Ct. Rule 402(f).
>
> The language of the amendment identifies with more precision than the present language the necessary relationship between the statements and the plea or discussion. See the dispute between the majority and concurring opinions in *United States v. Herman*, 544 F.2d 791 (5th Cir. 1977), concerning the meanings and effect of the phrases "connection to" and "relevant to" in the present rule. Moreover, by relating the statements to "plea discussions" rather than "an offer to plead," the amendment ensures "that even an attempt to open plea bargaining [is] covered under the same rule of inadmissibility." *United States v. Brooks*, 536 F.2d 1137 (6th Cir. 1976).
>
> The last sentence of Rule 11(e) (6) is amended to provide a second exception to the general rule of nonadmissibility of the described statements. Under the amendment, such a statement is also admissible "in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it." This change is necessary so that, when evidence of statements made in the course of or as a consequence of a certain plea or plea discussions are introduced under circumstances not prohibited by this rule (e.g., not "against" the person who made the plea), other statements relating to the same plea or plea discussions may also be admitted when relevant to the matter at issue. For example, if a defendant upon a motion to dismiss a prosecution on some ground were able to admit certain statements made in aborted plea discussions in his favor, then other relevant statements made in the same plea discussions should be admissible against the defendant in the interest of determining the truth of the matter at issue. The language of the amendment follows closely that in Fed.R.Evid. 106, as the considerations involved are very similar.
>
> The phrase "in any civil or criminal proceeding" has been moved from its present position, following the word "against," for purposes of clarity. An ambiguity presently exists because the word "against" may be read as referring either to the kind of proceeding in which the evidence is offered or the purpose for which it is offered. The change makes it clear that the latter construction is correct. No change is intended with respect to provisions making evidence rules inapplicable in certain situations. See, e.g., Fed.R.Evid. 104(a) and 1101(d).

The amendments were proposed by the United States Supreme Court by order dated April 30, 1979, were transmitted to Congress by the Chief Justice on the same day (441 U.S. 970, 985; Cong. Rec., vol. 125, pt. 8, p. 9366, Exec. Comm. 1456; H. Doc. 96–112). No further changes were made to Rule 11(e)(6) for more than two decades.

In 2002, without explanation, Rule 11(e)(6) was removed and current Rule 11(f) put in its place. ("Finally, revised Rule 11(f), which addresses the issue of admissibility or inadmissibility of pleas and statements made during the plea inquiry, cross references Federal Rule of Evidence 410." GAP Report – Rule 11). The admissibility of pleas and any related matters was placed solely within the province of FRE 410.